

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

WITH

JAMES C. MOORE

SECTION A: Purpose

This is a special order by consent issued under the authority of Sections 62.1-44.15(8a) and (8d) of the Code of Virginia between the State Water Control Board and James C. Moore to resolve certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. **ACode@** means the Code of Virginia (1950), as amended.
2. **ABoard@** means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code ' ' 62.1-44.7 and 10.1-1184.
3. **ADEQ@** means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code ' 10.1-1183.
4. **ADirector@** means the Director of the Department of Environmental Quality.
5. **ARegional Office@** means the Tidewater Regional Office of DEQ.
6. **AOrder@** means this document, also known as a consent special order.
7. **ARegulations@** means 9 VAC 25-210-10 *et seq.* - Virginia Water Protection Permit Program Regulation.

SECTION C: Findings of Facts and Conclusions of Law

1. James C. Moore owns property located on Wythe Creek Road near the intersection with Victory Boulevard in the City of Poquoson, Virginia. The property is identified in the Poquoson city records as parcels 18-100, 18-103 and 18-104. The property contains forested wetlands which drain to Cedar Creek and the Northwest Branch Back River which are tributaries to the Chesapeake Bay.
2. Sections 62.1-44.5 and 62.1-44.15:15 of the Code and Section 25-210-50.A of the Regulations require the issuance of a permit prior to the fill or discharge of pollutants into State waters.
3. Mr. Moore has not applied for a permit for the fill of wetlands on this site in accordance with the Regulations and DEQ has not issued a permit allowing such activities.
4. On September 26, 2001, staff from the U.S. Army Corps of Engineers ("ACOE") and DEQ inspected the Moore property. The inspection documented that forested wetlands had been cleared, tree stumps had been excavated, and that wetlands were filled with tree debris piles and sediment. Approximately one acre of wetlands were cleared, 0.5 acres of wetlands were filled with piles of tree stumps, and 0.5 acres of wetlands were filled alongside an existing logging road to widen it.
5. On September 28, 2001, the ACOE issued a cease and desist letter to Mr. Moore for unauthorized discharge of dredged/fill material in jurisdictional wetlands at the site and requested additional information relating to the land disturbing activities
6. On November 7, 2001, the City of Poquoson issued a Stop Work Order to Mr. Moore for working without a land disturbance permit.
7. Notice of Violation No. 01-11-TRO-003 was issued to Mr. Moore on November 27, 2001 in regard to the activities described above.
8. Restoration of the site was completed in accordance with guidance from the ACOE in April, 2003.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders Mr. Moore, and Mr. Moore agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders Mr. Moore, and Mr. Moore voluntarily agrees to pay a civil charge of \$3,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall include Mr. Moore's social security number. Payment shall be made by check payable to the "Treasurer of Virginia" delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Moore, for good cause shown by Mr. Moore, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in any permit issued by the Board.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the site as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. For purposes of this Order and subsequent actions with respect to this Order, Mr. Moore admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
5. Mr. Moore consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. Mr. Moore declares he has received fair and due process under the Administrative Process Act, Code ' ' 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
7. Failure by Mr. Moore to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. Mr. Moore shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Mr. Moore must show that such circumstances resulting in noncompliance were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Moore shall notify the Director or the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or

- noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Director of the Regional Office within two business days of learning of any condition listed above, which the Parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and Mr. Moore. Notwithstanding the foregoing, Mr. Moore agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Mr. Moore. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Moore from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

By his signature below, Mr. Moore voluntarily agrees to the issuance of this Order.

And it is so Ordered this _____ day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

James C. Moore voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _ day of

_____, 2003, by _____.

James C. Moore

Notary Public

My commission expires: _____.

APPENDIX A

JAMES C. MOORE

Mr. Moore shall:

1. Mail all submittals and reports required by this Appendix A to:
Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462
2. By October 1, 2003, submit a professional wetlands delineation for the property located on Wythe Creek Road.